

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 25, 2008

D051784 People v. Keo

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., Irion, J.

D053433 In re Cunningham on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Huffman, Haller and McDonald. We take judicial notice of the direct appeal D049997.

A jury found John Henry Cunningham guilty of manufacturing methamphetamine, possessing pseudoephedrine with the intent to manufacture methamphetamine and possessing hydriodic acid with the intent to manufacture methamphetamine. The jury also found Cunningham had prior drug convictions. The court also found Cunningham had several prior convictions. On October 20, 2006, the court sentenced Cunningham to the upper term of seven years on the manufacturing conviction, the upper term on the other two counts, (stayed,) plus two 3-year terms for the prior convictions, for a total of 13 years in prison. We affirmed the judgment on July 2, 2008.

Cunningham contends trial counsel was ineffective and his sentence is illegal under *Cunningham v. California* (2007) 549 U.S. 270. He concedes he has not filed a petition in any other court.

"[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court." (*In re Steele* (2004) 32 Cal.4th 682, 692.)

The petition is denied without prejudice to re-filing in the San Diego Superior Court.

D053493 Bain v. Superior Court of San Diego County/Rachal et al.

The petition for writ of mandate and request for stay have been read and considered by Justices Huffman, Haller and McDonald. The petition is denied.

D052030 Applegate v. Applegate

Based on the stipulation of the parties under section 128, subdivision (a)(8), the order is reversed and the case is remanded to the trial court with directions to vacate the order. The remittitur shall issue immediately. The parties are to bear their own costs. McDonald, Acting P.J.;

We Concur: McIntyre, J., Irion, J.

D050889 Kathryn S. v. Philip G. et al.

The order of the trial court is modified to: (1) delete the following language: "Therefore, the Court orders that \$5,000 in fees shall be deducted from the arrears owed by Respondent to Petitioner. As the Court granted Petitioner's motion for set aside on November 30, 2006, the \$5,000 shall be deducted effective that day"; and (2) replace that deleted language with the following language: "Therefore, the Court orders Petitioner to pay Respondent attorney fees of \$5,000, effective as of November 30, 2006." As modified, the order is affirmed. McDonald, J.; I Concur: Huffman, Acting P.J., I Concur in the Result: Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 25, 2008 (Continued)

D052281 People v. Franklin

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

D050658 People v. Thammavong

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Huffman, J.

D050838 Gogri v. Jack In The Box Inc.

The judgment is reversed and the matter is remanded with directions that the trial court enter a new order vacating its order setting aside Gogri's voluntary dismissal and to conduct further proceedings consistent with this opinion. CERTIFIED FOR PUBLICATION

McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D053591 Mark C. v. The Superior Court of San Diego County/San Diego County
Health & Human Services Agency et al.**

The petition is denied.

D053007 People v. Rhodes

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D052878 Ness et al. v. Rondberg et al.

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 26, 2008

D051483 In re the Marriage of McBride and Walters

The order is affirmed. McConnell, P.J.; We Concur: McDonald, J., O'Rourke, J.

D049240 Waits et al. v. Pacifica Villa Royale, LLC et al.

The judgment is affirmed. Appellants to pay respondents' costs on appeal. Haller, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D053436 Clayton H. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Shelly H. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D053181 Maria L. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for Maria L. has notified the Court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 8.454 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D052137 People v. Hunter

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Benke, J.

D051416 In re Evan V., a Juvenile

Appeal dismissed. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D052632 In re Shane G., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Irion, J.

D050979 Parker-Montes v. Parker

D051423 Parker-Montes v. Parker

(Consolidated)

The judgment is modified to remove the \$42,587.42 credit to Joshua based on the value of Computer Partners' bank account (California Bank & Trust account no. 2631). As so modified, the judgment is affirmed. The postjudgment order is affirmed. The matter is remanded for an adjustment to the equalization calculations based on the modified judgment. Joshua to pay Seana's costs for these appeals. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D053012 In re A.R., a Juvenile

The appeal is dismissed. McConnell, P.J.; We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 26, 2008 (Continued)

**D053598 Briarwood Capital, LLC et al. v. Superior Court of San Diego
County/Lennar Corporation et al.**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 27, 2008

D050721 People v. Bolton

The judgment of the trial court is reversed and the matter is remanded for a new trial.
CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

D051780 People v. Mathews

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McDonald, J.

D053090 Vargas et al. v. Fricks

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D052212 People v. Morgan

The sentence is vacated and the case is remanded to the superior court solely for resentencing in accordance with this opinion. After resentencing, the clerk of the superior court is directed to prepare an amended abstract of judgment that includes the new sentence and to transmit the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other aspects, the judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

D053426 A.C. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Pursuant to this Court's order of August 7, 2008, petitioner A.C. has not provided this Court with a notice of intent signed by petitioner or a declaration from counsel showing good cause for waiver of the requirement. The case is DISMISSED as to petitioner A.C.

D052720 People v. Jenkins

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D053471 Cahill et al. v. The Superior Court of San Diego County/Wells Fargo Bank

The petition is denied.

D053489 In re Medina on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 28, 2008

D052473 People v. Scruggs

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

Court convened at 10:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion
Clerk: M. Hubbard

D052744 County of San Diego et al. v. Bowen

Cause called on merits. Timothy M. Barry, Esq. argued for appellant. Susan Leach, Esq. argued for respondent. Mr. Barry replied. Cause submitted.

D052808 People v. Woods

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McIntyre, J.

**D053622 Perlan Therapeutics, Inc. v. The Superior Court of San Diego
County/Nexbio Inc., et al.**

The unopposed motion to seal the petition for writ of mandate, the supporting memorandum of points and authorities, and the appendix is denied. With respect to the appendix, portions of the record sealed in superior court should be filed separately, accompanied by appropriate sealing order(s) and companion motion papers. (Cal Rules of Court, rule 8.160(c).) Material that was not sealed below which counsel is requesting this court to seal should be segregated from material that is public, placed in an envelope marked "conditionally under seal," and lodged with the court. (Cal. Rules of Court, rule 8.160(e)(3).) The motion is also denied with respect to the petition and supporting memorandum of points and authorities without prejudice to filing a motion to seal particular portions of the petition and supporting memorandum of points and authorities, filing a public redacted version of the petition and supporting memorandum of points and authorities, and lodging a complete portion of the petition and supporting memorandum of points and authorities conditionally under seal. (Cal. Rules of Court, rule 8.160(e)(4).) The clerk is directed to return the petition for writ of mandate, the supporting memorandum of points and authorities, and the appendix along with all copies to petitioner. (See Cal. Rules of Court, rule 8.160(e)(7).)

D053602 In re Harter on Application for Permission to File

David N. Harter's application for a pre-filing order for permission to file new litigation (a petition for writ of mandate) has been read and considered. The application is DENIED. (Code Civ. Proc., 391.7, subd. (d).) The clerk of the court is directed to return the proposed petition and exhibits to Mr. Harter unfiled.

D052560 In re S.W., a Juvenile

The letter briefs filed by counsel for S.W., R.R., and Eugene W. have been read and considered by The Honorable Justices Haller, McDonald, and McIntyre. The appeals are DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 29, 2008

D052258 People v. Vizina

Judgment affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.

D053047 In re Glen C. et al., Juveniles

Upon filing a written abandonment of appeal, the appeal filed by father is dismissed and the remittitur is ordered to issue immediately.

D051314 People v. Donovan

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D053296 Keller Foundations v. Workers' Compensation Appeals Board and Global Offshore Intl.

The petition is denied.

D052744 County of San Diego et al. v. Bowen/County of Kern et al.

Reversed. Certified for publication. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.

D049765 People v. Ojito

The opinion filed on August 18, 2008, is ordered modified. No change in judgment.

D052653 In re Marriage of Herrington

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D053486 Butts v. Superior Court of San Diego County/People

The petition is denied.

D053426 A.C. et al. v. Superior Court of San Diego County/San Diego Health and Human Services Agency

The attorney for petitioner James A. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 29, 2008 (Continued)

D053530 Party City Corporation v. The Superior Court of San Diego County/Palmer

The Superior Court of San Diego County is ordered to show cause why the relief requested should not be granted. Absent objection on or before September 8, 2008, the response on file will be deemed the return to the order to show cause. Petitioner may file a reply on or before September 18, 2008.

Absent a written request on or before September 23, 2008, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

The court requests the parties notify the clerk immediately in the event the case settles in whole or as to any party or if settlement negotiations are underway.

D053384 Eddie F. v. Superior Court of San Diego County/ San Diego County Health and Human Services Agency

The attorney for petitioner Eddie F. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.